

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 5766 of 2015

Date of Decision: 14.03.2016

Jai Bhagwan

... Petitioner(s)

Versus

Ramkishan

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

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| 1. | Whether reporters of local newspapers may be allowed to see judgment? | Yes |
| 2 | To be referred to reporters or not? | |
| 3 | Whether the judgment should be reported in the Digest? | Yes |

Present: Mr. Arun Singal, Advocate
for the petitioner(s).

Ms. Sharmila Sharma, Advocate
for the respondent(s).

Shekher Dhawan, J.

Present petition is challenge to the order dated 14.8.2015 (Annexure P5), passed by learned Additional Civil Judge (Senior Division), Ganaur, whereby application, filed by the defendant for seeking permission to amend the written statement, was dismissed.

Learned counsel for the petitioner mainly submitted that in the written statement, plea was taken that house in dispute was orally sold to him by the respondent and if the sale deed was not found to be

legal, even then he is owner of the property being in possession for more than 12 years i.e. since 1962. Subsequently, an application under Order 6 Rule 17 CPC was filed that date be read as "8.8.1984" instead of 1962 and the said application was dismissed by the Court below.

Learned counsel for the respondent submitted that primarily, the suit is between two brothers and on the basis of pleadings already available on file, both the parties have already led their evidence and concluded the same. The present application has been filed just to fill up the lacuna, which is not permissible as per law and the Court below has rightly dismissed the application and present revision petition be also dismissed.

Having considered the submissions made by learned counsel for the parties, this Court is of the considered view that as per amended provisions of Order 6 Rule 17 CPC, ordinarily, amendment of pleadings cannot be allowed after commencement of trial. However, in the case in hand, issues were framed and plaintiff's evidence had already been concluded and at that stage, application for amendment of written statement was filed. As such, application for amendment is legally not maintainable.

No doubt, if amendment of pleadings is essential, the same can be allowed even after commencement of the trial but the Court has to see the circumstances and intention of the parties to allow or disallow the amendment of pleadings. In the present case, defendant wants to amend the pleadings so as to take the plea that his possession became adverse from 8.8.1964 rather than 1962. This is such an

amendment which cannot ordinarily be allowed and cannot be considered as formal amendment because of typographical mistake. For pleadings and proving ownership by way of adverse possession, party has to plead specifically that possession became adverse to the knowledge of true owner. The Court below has rightly declined this prayer with the observation that defendant is trying to take the Court for a ride by taking different dates as to when his possession became hostile to the knowledge of true owner. Although that is the crucial date for claiming adverse possession. Otherwise also, ownership by way of adverse possession is ownership by way of default only and that is required to be pleaded and proved by strict evidence. Applicant cannot be allowed to take different pleas at different time especially with regard to time of adverse possession at different time and the Court below has rightly dismissed the application for seeking amendment in the written statement on that point.

In view of above, present petition, being devoid of any merit, stands dismissed.

(Shekher Dhawan)
Judge

March 14, 2016

"DK"